



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 10TH DAY OF AUGUST, 2023
BEFORE
THE HON'BLE MR JUSTICE HEMANT CHANDANGOUDAR
CRIMINAL PETITION NO. 5242 OF 2023

BETWEEN:

1. SRI. BYREGOWDA,
S/O LATE. RAMASWAMY,
AGED ABOUT 34 YEARS,
R/AT THIPPAPURA KASABA HOBLI,
DODDABALLAPURA TALUK - 561 203.
BANGALORE RURAL DISTRICT.
2. SRI. VENKATARAJU,
S/O R.M. RAMAIAH,
AGED ABOUT YEARS,
R/AT NO.756, 10TH CROSS,
SHANTHINAGAR,
DODDABALLAPURA TALUK - 561 203.

...PETITIONERS

(BY SRI. R. BHADRINATH, ADVOCATE)



AND:

1. THE STATE OF KARNATAKA,
BY DODDABALLAPURA RURAL POLICE,
DODDABALLAPURA TALUK,
BANGALORE RURAL DISTRICT,
REP BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BANGALORE - 560 001.



2. SRI. THIMMEGOWDA,
S/O HANUMANTHAPPA,
AGED ABOUT 65 YEARS,
R/AT THIPPAPURA KASABA HOBLI,
DODDABALLAPURA TALUK,
BANGALORE RURAL DISTRICT - 561 203.
3. XYZ
D/O THIMMEGOWDA,
W/O SRI. BYREGOWDA,
AGED ABOUT 25 YEARS,
R/AT THIPPAPURA KASABA HOBLI,
DODDABALLAPURA TALUK - 561 203.
BANGALORE RURAL DISTRICT.

...RESPONDENTS

(BY SRI. K. S. ABHIJITH, HCGP FOR R1;
R2 - NOTICE DISPENSED WITH,
SRI. B. N. UMESH, ADVOCATE FOR R3)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C PRAYING TO QUASH THE CRIMINAL PROCEEDINGS INITIATED FOR THE OFFENCE P/U/S.366, 376, 212 OF IPC AND SEC.4 AND 17 OF POCSO ACT REGISTERED IN CR.NO.45/2015 OF DODDABALLAPURA RURAL POLICE STATION, NOW PENDING ON THE FILE OF THE ADDITIONAL DISTRICT AND SESSIONS JUDGE FTSC III BANGALORE RURAL DISTRICT, IN SPL.C.NO.67/2016 VIDE AT ANNEXURE A AND B.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:



ORDER

The petitioners/accused herein are sought to be prosecuted for the offences punishable under Sections 366, 376 and 212 of IPC and Section 4 and 17 of Protection Of Children from Sexual Offences Act.

2. The case of the prosecution is that, the accused No.1 had committed penetrative sexual assault on the daughter of the defacto complainant. Accused No.2 is alleged to have given shelter to accused No.1 for the commission of the crime. Accused No.1 herein and victim are present before this court. Service of notice to respondent No.2-defacto complainant is dispensed with.

3. The accused and the victim have filed an application under Section 320(2) R/w Section 482 of Cr.P.C stating that the marriage of the victim was solemnized with the accused on 21.06.2019 and as on the date of said marriage, the victim was aged about 21 years 4 months and the same is registered before the sub registrar concerned and from the wed-lock, a male child



was born on 13.03.2022. The application is placed on record.

4. The coordinate Bench of this court in Crl.P.No.6214/2022 disposed of on 02.08.2022, in similar circumstances has quashed proceedings for the offence punishable under the POCSO Act. After relying on the various decisions of Hon'ble Supreme Court, the observation made at para No.9 reads as under:

"9. Therefore, in the light of the marriage between the prosecutrix and the accused; the marriage being registered; a certificate being issued in accordance with law depicting the couple to be a legally wedded husband and wife; a girl child being born from the wedlock to which a birth certificate issued by the Competent Authority being placed on record, in such cases, the prosecution can hardly prove the guilt against the petitioner. If the victim is going to turn hostile in a trial at a later point in time and the petitioner gets acquitted of all the offences, the sword of crime would have torn the soul of the accused. It is not the end result that is painful or otherwise, but the process in the criminal justice system that generates such pain. In the teeth of these facts,



glaring enough they are, if the court would shut its doors to the couple who are married and bringing up the child, the entire proceeding would result in miscarriage of justice. It is therefore, I deem it appropriate, to accept the settlement between the parties and terminate the proceedings qua the petitioner."

5. The victim was aged about 17 years as on the date of incident and prosecution to prove that the victim was aged 17 years, have prosecuted the school admission register and the marks card, but the birth certificate issued by the competent authority is not produced. In the absence of birth certificate issued by the competent authority, it would be difficult to establish that the victim was aged 17 years as on the date of incident. The parties having settled the matter amicably and leading cordial matrimonial life, the prosecutrix and the child will be put to irreparable loss hardship, if the impugned proceedings are allowed to be continued. The probability of conviction of the accused is also remote and bleak, since the survivor is not likely to depose against her husband. Hence, the



continuation of criminal proceeding will be an abuse of process of law. Therefore, I pass the following:

ORDER

- 1) Criminal Petition is ***allowed***.
- 2) The impugned proceedings in Special case No.67/2016 on the file of Additional District and Sessions Judge FTSC III, Bengaluru Rural District is hereby quashed.

**Sd/-
JUDGE**

BH
List No.: 1 Sl No.: 21
CT:PH